2012 WL 4207360 (Ga.) (Appellate Brief)
Supreme Court of Georgia.

STATE OF GEORGIA,
v.
James R. HARPER, III, Jerry W. Chapman, Jeffrey L. Pombert, Appellants.

No. S12A1508.
2012.

Appellants' Joint Supplemental Response to Appellee's Brief in Opposition

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***2** Pursuant to Rule 24 of the Rules of the Supreme Court of Georgia, Appellants file this Joint Supplemental Brief in support of their Joint Appeal.

I. SUMMARY OF ARGUMENT

Through clever pleading, "victim" shopping, and ignoring the results of an audit that raised questions about the very transactions that form the basis of the Indictment, the State attempts to turn what at most is a fee dispute into a crime. Appellants ask this Court to overrule the trial court and bring this matter to a swift conclusion.

A. Counts Two Through Eleven (Theft and Attempted Theft By Taking)

Indictment Counts Two, Three, Four, Five, Six, Seven, Eight, Nine, and Eleven allege "Theft by Taking." Count Ten alleges "Attempted Theft by Taking." [1] (Counts Two through Eleven are collectively referred to hereinafter as the "Theft Counts").

The Theft Counts should be dismissed because the four-year statute of limitations, O.C.G.A. § 17-3-1(c), expired no later than 2007; however the Indictment was returned in January 22, 2010. To overcome this, the State cites two tolling statutes, O.C.G.A. § 17-3-2(2) and O.C.G.A. § 17-3-2.2, but neither of them applies to this case.

***3** O.C.G.A. § 17-3-2(2) does not apply because the "victim" became aware of the crimes in 2003. The transactions described in the Indictment were discovered and reported during a 2003 audit by Guenther Willner at the direction and under the control of Gaston Glock, Glock, Inc., and Consultinvest, Inc. The audit traced all of the funds at issue from their sources to one of Mr. Harper's accounts. The alleged thefts were thus made known to the "victim" in 2003. O.C.G.A. § 17-3-2.2 is not applicable because the "victim" in the Indictment was not Gaston Glock. The record shows none of Mr. Glock's money was transferred directly to any of the Appellants. [2] Moreover, O.C.G.A. § 17-3-2.2 violates the Equal Protection Clause of the Fourteenth

Amendment of the United States Constitution and Article 1, Section 1, Paragraph 2 of the Georgia Constitution because it arbitrarily extends the statute of limitations.

B. Count One (RICO)

According to O.C.G.A. § 16-14-8, the Statute of Limitations for a RICO offense is five years; however pursuant to O.C.G.A. § 16-14-3(8)(A), a further limitations period applies to patterns of racketeering activity. The definition of a "pattern of racketeering activity" includes this caveat: "the last of such acts [must have] occurred within four years... after the commission of a prior act of ***4** racketeering activity." The State alleges that the scheme of racketeering activity began in February 2001 and continued into February of 2009; in particular, the State alleges conduct in March of 2005 and additional activities in 2007 and 2009. However, the activities in 2007 and 2009 are not qualified predicate acts because, even if true, they are misdemeanors, not felonies.

II. SUPPLEMENTAL STATEMENT OF FACTS

Appellants incorporate by reference their Joint Appeal and the Statement of Facts within that appeal as if restated verbatim. [3] In addition, Appellants identify the following relevant facts.

The Indictment charges Appellants with violations of the Georgia RICO Act and various thefts and attempted thefts. Appellants' Joint Appeal recounts the timing and nature of these charges. [4] The Theft Counts arose out of events between November 2001 and April 2003. The latest event is found in Count Ten. There the State alleges that between April 3 and April 6, 2003 [5], Mr. Harper submitted ***5** fraudulent legal bills to Glock, Inc. [6] The Indictment was returned on January 22, 2010, more than seven years later. [7]

In 2003 Gaston Glock hired Guenther Willner to audit Glock, Inc., Consultinvest, Inc., and BIA America. Mr. Willner testified that his audit report identified the transfers to Mr. Pombert's IOLTA account mentioned in Counts Seven and Eight. [8] Mr. Willner stated that Mr. Pombert "received very high amounts during this time," and that these transfers were *suspicious.* [9]

Detective Harrison, who investigated this case, stated in both his "Investigative Timeline" and testimony that Gaston Glock and Glock, Inc. knew of the alleged over-billings mentioned in Count Ten in 2003.

"Q: So there's no way to deny the fact that Glock had already determined that there was a scheme, that there was fraud dealing with the billings before May of 2003?

Det. Harrison: Right." [10]

***6** Detective Harrison's "Investigative Timeline" states that in 2003, "Counsel's over-billing scheme is detected." [11] The "Investigative Timeline" also notes that the alleged victim communicated these issues to the FBI and the federal court system in 2006. [12] Furthermore, Gaston Glock's attorney wrote a letter "for law enforcement use only" regarding these matters in December 2003. [13]

For the Theft Counts, the funds allegedly stolen did not come directly from Gaston Glock. Count Seven, for example, involves a transfer of funds to Mr. Pombert's IOLTA account. The funds originated from Glock, Inc., were transferred to Technical Supplies, Inc. ("TSI") (an entity owned by Mr. Harper), and were later transferred to Mr. Pombert's IOLTA account. [14] Count Eight also involves a transfer of funds to Mr. Pombert's IOLTA account. The funds originated with Consultinvest, Inc., were transferred to Tremont Enterprises, Inc. (an entity owned by Mr. Harper) and thereafter were transferred to Mr. Pombert's IOLTA account. [15] Count Ten describes Mr. Harper's legal bills to Glock, Inc. and Consultinvest, Inc., corporate entities separate from Gaston Glock. [16] During this time, Mr. Glock owned shares in Glock Gmbh, a separate entity which then owned ***7** shares in Glock, Inc. [17] Mr. Glock owned no shares in Consultinvest, Inc., which was entirely owned by Johann Quendler. [18] Appellant Harper's legal bills went directly to Glock, Inc., as opposed to Gaston Glock. [19]

III. ARGUMENT

The State in its Brief in Opposition makes four basic arguments opposing Appellants' Joint Appeal: (i) the Theft Counts are not barred by the Statute of Limitations either because the "victim" was unaware of the alleged crimes or because "the statute of limitations does not begin to run until a crime where the victim is over the age of 65 is reported to law enforcement" [20]; (ii) all of the assets that Appellants allegedly stole or attempted to steal were those of Gaston Glock [21]; (iii) the extended fifteen year Statute of Limitations is constitutional [22]; and (iv) Racketeering Activity and Overt Acts in furtherance of the pattern of racketeering activity occurred within the five year period immediately preceding the date of the Indictment and therefore the Statute of Limitations has not run. [23]

A. The Statute of Limitations has run on each of the Theft Counts

***8** The Statute of Limitations for theft by taking, O.C.G.A. § 17-3-1(c) [24], states that prosecutions "must be commenced within *four years* after the commission of the crime..." (emphasis added). To overcome the Statute of Limitations, the State's Brief in Opposition relies on two tolling statutes: (i) O.C.G.A. § 17-3-2(2) [25] tolls prosecutions under O.C.G.A. § 17-3-1 until the alleged victim becomes aware of the crime and (ii) O.C.G.A. § 17-3-2.2 [26] tolls prosecutions for crimes when "*the* ***9** victim is a *person* who is 65 years of age or older... until the violation is reported to or discovered by" law enforcement with a full tolling period of fifteen years (emphasis added).

The State makes three arguments regarding these statutes:
1. For Counts Seven, Eight, Nine, Ten, and Eleven, the victim was unaware of the alleged thefts until Detective Harrison began his investigation, thereby tolling the Statute of Limitations under § 17-3-2(2);

2. For counts Two, Three, Four, Five, Six, Seven, Eight, and Ten, the alleged victim in this case was Gaston Glock, an individual over 65 years old, thereby tolling the statute under § 17-3-2.2;

3. For the same counts in the preceding paragraph, Appellants have not provided a sufficient argument to show that § 17-3-2.2 is unconstitutional.

In response, Appellants argue that neither of these statutes is applicable in this case. Contrary to* 17-3-2(2), the "crimes" alleged were known seven years before the 2010 indictment was returned. Contrary to § 17-3-2.2, the alleged victim ***10** in this case

is not an **elderly** person, but is instead corporate entities - separate legal persons. Furthermore, § 17-3-2.2 violates the Equal Protection Clause in that it arbitrarily treats similarly situated criminal defendants differently.

1. O.C.G.A. § 17-3-2(2) does not toll the four-year Statute of Limitations since the victim was aware of the alleged crimes in 2003.

O.C.G.A. § 17-3-2(2) tolls prosecutions for theft crimes when neither the alleged crime nor the alleged defendant were known by the victim. The State bears the burden of proving that this exception to the Statute of Limitation applies. See *Desalvo v. State*, 299 Ga. App. 688, 683 S.E.2d 652 (2009); *State v. Conzo*, 293 Ga. App. 72, 666 S.E.2d 404 (2008). Specific to § 17-3-2(2) and this case, the State must show that the alleged thefts were unknown by the victim. *See Lee v. State*, 211 Ga. App. 112, 438 S.E.2d 108 (1993).

For Counts Seven, Eight, Nine, Ten, and Eleven, the State attempts to meet this burden by arguing that Glock and Glock, Inc. could not have known about the alleged thefts or attempted thefts until Detective Harrison subpoenaed Mr. Pombert's IOLTA account. [27] The State bases the application of § 17-3-2(2) for these counts on the victim not having access to or knowledge of Mr. Harper's transfers of funds collected from his billings into Mr. Pombert's IOLTA account.

The facts of this case demonstrate otherwise. For Counts Seven and Eight, Guenther Willner's testimony and audit report specifically identified these ***11** transfers to Mr. Pombert IOLTA account. [28] Willner's May 2003 audit even mentions that these transfers were going "into an account with Bank of America" in Mr. Pombert's name. [29] Willner further testified that Mr. Pombert completed "one thousand two twenty-nine point sixty hours" of work, and yet received significant funds from Mr. Harper. [30]

For Count Ten, Detective Harrison testified that Gaston Glock and Glock, Inc. were aware of the allegedly fraudulent bills in 2003. [31] Furthermore, Harrison's own "Investigative Timeline" notes that not only were the alleged victims aware of the theft attempts in 2003, but they had already begun seeking law enforcement intervention due to the attempted thefts in December 2003. [32] Mr. Glock's attorney even drafted a letter "for law enforcement use only" regarding these matters in December 2003. [33]

The State argues that the victim must have actual, not constructive, knowledge of the crime. *See State v. Robins*, 298 Ga. App. 70, 674 S.E.2d 615 (2009). Based on the record in this case, Mr. Glock had actual knowledge because ***12** the underlying transactions that form the basis of the Indictment were contained in the audit report.

In addition to the alleged victim's knowledge, the State refers to its own knowledge as the trigger for tolling the Statute of Limitations. [34] This would mean that for Counts Seven, Eight, and Ten, the date on which § 17-3-2(2) would apply would be July 2, 2008.

Georgia law contradicts the State's reliance on its own knowledge. The law, as even the State concedes, is that "the crime victim's knowledge of the crime is imputed to the State." *State v. Campbell*, 295 Ga. App.856, 673 S.E.2d 336 (2009).The State, thus, cannot re-start the statute of limitations under § 17-3-2(2).

Glock's auditor and the State's investigator agree that the victim knew of the alleged crimes in 2003.Therefore the statute of limitations expired in 2007 for all of the theft and attempted theft counts including, without limitation, the theft counts involving Mr. Pombert (Seven, Eight, and Ten). The Indictment for these Counts was too late and they should be dismissed as a matter of law.

2. O.C.G.A. § 17-3-2.2 is not applicable when the alleged victim is a corporation, and the statute violates the Equal Protection Clause.

For Theft Counts Two, Three, Four, Five, Six, Seven, Eight, and Ten, the State also relies on O.C.G.A. § 17-3-2.2 to overcome the Statute of Limitations. This statute tolls prosecutions where the victim is 65 years or older until the ***13** alleged crimes are made known to law enforcement. Once made known to law enforcement, the crime must be prosecuted within fifteen (15) years of its commission. This statute does not apply for two reasons.

a. The "Victim" is aCorporation.

In order to use § 17-3-2.2's generous tolling period, the State argues that the victim in this case is Gaston Glock. To support its claim, the State cites Guenther Willner's testimony that Mr. Glock placed some of his own money in BIALUX, S.A, an entity the State alleges Appellants stole from. [35]

The Indictment alleges that only for Counts Two and Four are the Appellants charged with stealing money that came from Mr. Glock through BIALUX, S.A. [36] And even for those two counts, the alleged theft did not come directly from Glock himself, but instead from a separate corporate entity, BIALUX, S.A. [37] The other alleged thefts involved corporate entities, including BIA America, Glock, Inc., and Consultinvest, Inc. Mr. Glock's connection to these entities was limited to an ownership interest in Glock Gmbh, which then owned shares in Glock, Inc. [38]

The State's argument is that because Gaston Glock had interests in some of these entities the alleged crimes were really committed against him. Georgia courts ***14** have already prohibited this type of defensive veil piercing in other circumstances. *See Milk v. Total Pay and H.R. Solutions, Inc.*, 280 Ga. App. 449, 634 S.E.2d 208 (2006) (A shareholder is not a proper party to a proceeding by or against the company solely by reason of being a member of the company, except in the case of actions by the member or derivative actions.) If anything, Mr. Glock held a beneficial interest in these corporate entities. Under O.C.G.A. § 16-14-3(2), a beneficial interest includes an interest under a "fiduciary agreement" in which another entity "hold[s] legal or record title... for the benefit of such person." Furthermore, the statute states that such a beneficial interest "does not include the interest of a stockholder." Mr. Glock's shares in Glock Gmbh and his transfers to BIALUX, S.A. created not a shareholder interest, but instead a mere fiduciary agreement.

Furthermore, the State's interpretation of § 17-3-2.2 contradicts Georgia's policy behind tolling statutes. Namely, "[a]ny exception to the limitation period must be construed narrowly and in light most favorable to the accused." *Sears v. State*, 182 Ga. App.480, 356 S.E.2d 72 (1987) (overruled on other grounds by *Johnston v. State*, 445 S.E.2d 566 (Ga. App. 1994)). Contrary to this general rule, the State attempts to expand the application of § 17-3-2.2 beyond individual "persons" to corporations partly owned by individuals.

***15** In sum, no money was ever stolen from Gaston Glock. The alleged thefts involved corporate entities and corporate funds only. The State, however, argues that the corporate form of Glock, Inc. should be disregarded because its principal shareholder - a legal entity - is partly owned by someone over 65. Interpreting § 17-3-2.2 this way is contrary to Georgia law, which states, "[t]he corporate identity is entirely separate from the identity of its officers and shareholders." *Nationwide Mortg. Services, Inc. v. Troy Langley Const., Inc.*, 280 Ga. App. 539, 634 S.E.2d 502, 506 (2006), citing *Jerry Dickerson Presents, Inc. v. Concert/ Southern Chastain Promotions*, 579 S.E.2d 761 (2003).

Furthermore, the State's attempt to disregard corporate forms is arbitrary. It has nothing to do with the behavior of shareholders vis-a-vis a corporation. *See Baillie Lumber Co. v. Thompson*, 279 Ga. 288, 299 (2005) (Defining the policy behind veil piercing as "the corporate entity may be disregarded for liability purposes when it is shown that the corporate form has been **abused**.") Instead, it is concerned only with the age of shareholders. Individuals invest in corporations and limited liability companies as

a way to protect themselves from liability. Individual investors routinely take advantage of the protected separation between company and shareholder. Permitting them to now ignore that separation for their own benefit on a catch-as-catch-can basis creates an imbalance between these shareholder liability protections and the outsider protections that a defendant may ***16** not be sued by a company because of a violation committed against one of its shareholders. *See Nationwide Mortg. Services, Inc., supra,* 634 S.E.2d at 506, citing *Jerry Dickerson Presents, Inc. v. Concert/ Southern Chastain Promotions,* 579 S.E.2d 761 (2003).

Still the fact remains that the State cannot demonstrate that Glock is the personal victim of the alleged crimes. All of the underlying transfers took place between the Appellants and a corporate entity. This fact cannot be ignored or overcome by a simple showing of Mr. Glock's ownership interest. Georgia courts have already prohibited such defensive veil piercing in other contexts. Permitting it in the present case may solve the State's problem, but it would only undermine Georgia's clearly stated corporate laws and policies.

b. The Statute Violates the Equal Protection Clause.

Moreover, § 17-3-2.2 violates the Equal Protection Clause.[39] The State ignores much of Appellants' initial argument, and in doing so loses sight of the critical issue, namely, that § 17-3-2.2 treats similarly situated defendants differently on an arbitrary basis.

Section 17-3-2.2 discriminates against criminal defendants on one criterion - age. Whether a defendant can be prosecuted after a certain period of time depends only on the age of the alleged victim. One criminal defendant could ***17** steal from a 64 year old and that victim would then have four years to prosecute. If instead that victim was 65, the defendant could face prosecution fifteen years after the fact. There is nothing further in this statute that explains why 65 year olds need this protection, nor is there any further limitation that grants this tolling period to 65 year olds suffering from an age-based disability or vulnerability. For this reason, Appellants argue that the law is arbitrary and violates the Equal Protection Clause.

Appellants are not claiming that protecting vulnerable senior citizens is not a legitimate state interest. Appellants cite numerous other state laws that offer such protection to **elders**. The issue with § 17-3-2.2 is how it goes about doing this. Unlike other state laws, § 17-3-2.2 does not limit its scope to those seniors who need actual protection. *C.f.* Fla. Stat. Ann. § 825.101; Mo. Rev. Stat. § 660.250. The law is not just over-inclusive. It is also drastic in length. Other tolling statutes both within Georgia and in other states fail to extend to victims or plaintiffs anywhere close to fifteen years. O.C.G.A. § 9-7-73, for example, gives mentally incompetent persons and minors only five years beyond the two-year statutory period to file medical malpractice claims. *See Deen v. Egleston,* 597 F.3d 1223 (11th Cir. 2010). Florida's **elder abuse** statute only grants very vulnerable seniors five years. Fla. Stat. Ann. § 775-15.

***18** But what is most fatal to § 17-3-2.2 is that it treats similarly situated defendants differently based solely on an arbitrary age classification. Equal protection challenges for criminal statutes center on whether the defendant is similarly situated to other criminal defendants, and then despite being similarly situated, the particular defendant is treated differently under the law. *Drew v. State,* 285 Ga. 848, 850 n.3 (2009).

The class involved in this case is defendants accused of theft by taking. Appellants have not been charged with a specific "theft against **elders**" crime. The indictment only specifies violations of the Georgia Racketeer Influenced and Corrupt Organization Act, theft, and attempted theft. Appellants are alleged to have stolen from a fully competent, successful senior citizen. Based on his continued business acumen, Mr. Glock exhibits an equal or greater savvy as any thriving 64 year old. Appellants should be treated just like any other defendant accused of stealing from a competent 64 year old. That is not the case here.

Instead, the State argues, Appellants should lose their statutory protections simply because of someone's chronological age. Section 17-3-2.2 does not differentiate between particularly vulnerable seniors and those, like Mr. Glock, who are fully capable of handling their own affairs. There is no limiting language that the seniors being protected by the tolling statute are those

whose faculties have ***19** been compromised by old age or who are otherwise vulnerable to **abuse**. The law simply grants this protection based purely on their birth date.

There is also another complication. This statute cuts at a critical protection for criminal defendants. As this Court has already said, Statutes of Limitations are a primary guarantee against bringing stale claims against defendants. *Andrews v. State,* 175 Ga. 22 (1985), *quoting U.S. v. Marion,* 404 U.S. 307, 322 (1971). These laws guard against prejudicial delays and grant citizens a final, procedural protection when the facts and evidence underlying criminal charges "have become obscured by the passage of time..." *Womack v. State,* 260 Ga. 21, 22 (1990).

The State argues that highlighting competent seniors is not enough to show an equal protection violation. That is not what Appellants have done. Instead, Appellants have demonstrated that a tolling statute that protects a wide, over-inclusive, swath of citizens based purely on age and nothing else to the detriment of criminal defendants' rights is unconstitutional. Section 17-3-2.2 is not limited to particularly vulnerable seniors. It is not limited to particular crimes committed against seniors. It divides defendants who have committed the same alleged crime into two groups, one where the statutory and procedural protections are upheld and another where they are lost.

B. The State Has Failed to Allege Two Eligible RICO Predicate Acts within the Statute of Limitations and Therefore the RICO Count should be dismissed.

***20** According to O.C.G.A. § 16-14-8 [40], the Statute of Limitations for a RICO offense is five years. Pursuant to O.C.G.A. § 16-14-3(8)(A) [41], a second limitation period applies to the racketeering acts themselves. The definition of a "pattern of racketeering activity" includes this caveat: "the last of such acts [must have] occurred within four years... after the commission of a prior act of racketeering activity."

The State argues that "the scheme of racketeering activity is alleged to have started as early as February 20, 2001 and continued into February of 2009." [42] The State alleges conduct in March of 2005 and additional activities in 2007 and ***21** 2009. [43] However, the State completely ignores Appellants' argument that the activities in 2007 and 2009 are not qualified predicate acts because, as alleged, they involve misdemeanors, not felonies. [44] Because the activities relied upon by the State in 2007 and 2009 are not qualifying predicate acts, the State has failed to meet its burden and therefore the RICO claim against Appellants is barred by the statute.

IV. CONCLUSION

For the foregoing reasons, Appellants urge this Court to reverse the decisions of the trial court denying Appellants' General and Special Demurrers and the Plea in Bar.

Footnotes

1 Mr. Pombert is named in Counts Seven, Eight and Ten only.

2 In addition, all of the funds described in counts Seven, Eight and Ten, i.e., the funds involving Mr. Pombert's IOLTA account, originated with the corporations not an individual "victim." (See Appellants' Joint Appeal, page 10)

3 Appellants' Joint Appeal, p. 4-11.

4 Appellants' Joint Appeal, p. 8-11.

5 This is the latest event in which Mr. Pombert is alleged to have been involved in either the RICO "conspiracy" or any other "crime". (See General Indictment, Count 10, page 27).

6 General Indictment, p. 27.

7 See General Indictment.

8 1T:48-49, 78; R46:529-533. Appellants incorporate by reference the citation system used in their Joint Appeal. Namely, a citation to a pleading will reference the Docket number, followed by the page in the official appellate record. All exhibits introduced at the hearing are contained in Docket entry #46. Thus, a reference to any exhibits will appear as "R46:550" which will refer to an exhibit located at page 550 of the record. The Hearings on the Motions lasted two days: October 22, 2010, and October 28, 2010. All references to the transcript for October 22 shall be referenced as "1T" followed by the page number. The October 28 hearing transcript shall be referenced herein as "2T".

9 R46:529-533.

10 1T: 154.

11 1T: 154; Bates no. J011643.

12 1T: 147; Bates no. J011644.

13 1T: 153; Bates nos. J002096, J002100, J002101.

14 General Indictment, no. 16.

15 General Indictment, no. 17.

16 General Indictment.

17 1T:15.

18 1T:67-69; R46: 935, 936, 940, 956.

19 Bates no. J019491. All of the legal bills were introduced in evidence at the earlier hearing.

20 Appellee's Brief,p 10.

21 Appellee's Brief, p. 31.

22 Appellee's Brief, p. 33.

23 Appellee's,p. 23.

24 O.C.G.A. § 17-3-1(c) in relevant part reads:

Except as otherwise provided in Code Section 17-3-2.1, prosecution for felonies other than those specified in subsections (a), (b), and (d) of this Code section shall be commenced within four years after the commission of the crime, provided that prosecution for felonies committed against victims who are at the time of the commission of the offense under the age of 18 years shall be commenced within seven years after the commission of the crime.

25 O.C.G.A. § 17-3-2(2) reads in relevant part:

The period within which a prosecution must be commenced under Code Section 17-3-1 or other applicable statute does not include any period in which...

(2) The person committing the crime is unknown or the crime is unknown[.]

26 O.C.G.A. § 17-3-2.2 reads:

In addition to any periods excluded pursuant to Code Section 17-3-2, if the victim is a person who is 65 years of age or older, the applicable period within which a prosecution must be commenced under Code Section 17-3-1 or other applicable statute shall not begin to run until the violation is reported to or discovered by a law enforcement agency, prosecuting attorney, or other governmental agency, whichever occurs earlier. Such law enforcement agency or other governmental agency shall promptly report such allegation to the appropriate prosecuting attorney. Except for prosecutions for crimes for which the law provides a statute of limitations longer than 15 years, prosecution shall not commence more than 15 years after the commission of the crime.

27 See Appellee's Brief in Opposition, p. 16-18, 20.

28 1T:48-49, 78; R46:529-533.

29 Bates no. J010974.

30 These funds included the $340,000 underlying Count Seven. This money was transferred from Mr. Harper to Mr. Pombert. Mr. Pombert later returned the $340,000 to Mr. Harper. (See General Indictment)

31 1T: 154.

32 Bates nos. J011643, J011644. These documents are contained in the exhibits introduced during the initial hearing during the cross-examination of Detective Harrison.

33 Bates nos. J002096, J002100, J002101.

34 See Appellee's Brief in Opposition, p. 16-18, 20.

35 Appellee's Brief in Opposition, p. 31-32.

36 General Indictment nos. 1 and 4.

37 Bates nos. J017145, J017146.

38 See Additional Statement of Facts above.

39 Appellants' Joint Appeal, p. 30-48.

40 OCGA § 16-14-8 states in relevant part:
Notwithstanding any other provision of law, a criminal or civil action or proceeding under this chapter may be commenced up until five years after the conduct in violation of a provision of this chapter terminates or the cause of action accrues

41 OCGA § 16-14-8 states in relevant part:
(8) "Pattern of racketeering activity" means: (A) Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity...

42 Appelle Brief, p. 23.

43 Appellee Brief, pp. 24-25.

44 Appellants' Joint Appeal, p. 13, FN 7.

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